

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SAINST LOUIS UNIVERSITY,)
a Missouri benevolent corporation,)
)
Plaintiff,)
)
v.)
)
AVIS MEYER,)
)
Defendant.)
)
Case No. 4:07CV1733 CEJ

PLAINTIFF SAINT LOUIS UNIVERSITY'S
MOTION FOR LEAVE TO AMEND EXHIBIT LIST

COMES NOW Plaintiff Saint Louis University (“Plaintiff”), by and through its undersigned counsel and for the reasons set forth below moves for leave of Court to file the amended exhibit list submitted herewith which identifies one additional exhibit not previously listed. In support of this Motion, Plaintiff states as follows:

1. Per this Court's Case Management Order, Plaintiff filed its pre-trial filings, including its Exhibit List [dkt # 82], on December 31, 2008.

2. On the same day, Defendant Avis Meyer (“Defendant”) filed his Trial Brief asserting, among other things, that he had never registered an entity with the Secretary of State before he incorporated the non-profit corporation which is the subject of this litigation. [dkt # 89, p.3, citing Meyer Dep. p. 83, line 24 – p. 84, line 2]. He appears to assert this contention for the purpose of establishing that he was not knowledgeable as to the legal effect of his actions.

3. To the contrary, the records of the Missouri Secretary of State reflect that Defendant has indeed registered an entity with the Missouri Secretary of State. *See* Fictitious Name Registration, attached hereto as Exhibit 1.

4. Based upon Meyer's assertion in his Trial Brief and Plaintiff's subsequent discovery of directly contrary evidence which will rebut Meyer's assertions if repeated at trial, Plaintiff seeks leave to amend its Exhibit List to add the Registration of Fictitious Name for "Martha's Colonial Ice Cream and Candy Shoppe" that Meyer previously filed with the Missouri Secretary of State. *See* Amended Exhibit List, attached hereto as Exhibit 2

5. There is no prejudice to Defendant as the document is of public record and was within Defendant's knowledge and control all along. Defendant himself, during his deposition, raised the issue of his former ice cream shop, although denied having ever registered it as an entity. *See* Meyer Dep. p. 28, line 21 – p. 29, line 16 and p. 48, lines 10 – 18, attached to Defendant's Trial Brief.

6. A proposed order is attached hereto as Exhibit 3.

WHEREFORE, for all of the foregoing reasons, Plaintiff Saint Louis University respectfully requests that this Court grant Plaintiff leave to file its Amended Exhibit List and for such other relief to Plaintiff as may be just and proper.

Respectfully submitted,

LEWIS, RICE & FINGERSH, L.C.

By: /s/ Frank B. Janoski
Frank B. Janoski, #3480
Bridget Hoy, #109375
500 North Broadway, Suite 2000
St. Louis, MO 63102
Telephone: (314) 444-7600
Fax: (314) 612-1307
Email: fjanoski@lewisrice.com
Email: bhoy@lewisrice.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I further certify that on the 9th day of January, 2009, the foregoing was filed with the Clerk of Court to be served via the Court's ECF system upon all counsel of record.

/s/ Frank B. Janoski

Frank B. Janoski
LEWIS, RICE & FINGERSH, L.C.
500 N. Broadway, Suite 2000
St. Louis, MO 63102
Telephone: (314) 444-7600
Facsimile: (314) 612-1307
E-mail: fjanoski@lewisrice.com